

MUHLENBERG COLLEGE

Family and Medical Leave Act (FMLA) Leave Policy

1. A Muhlenberg College employee is eligible to request an unpaid FMLA leave of up to 12 weeks if he/she has been employed by the College for at least twelve (12) months and has worked at least 1250 hours during the twelve (12) month period immediately preceding the leave.
2. Subject to the requirements described in this policy, an eligible employee may request and will be granted up to twelve (12) workweeks of unpaid FMLA leave during any twelve (12) month period for any one or more of the following reasons:
 - a. the birth and care of a newborn child;
 - b. the placement of a child for adoption or foster care and care of the newly placed child in the employee's home;
 - c. the care of the employee's spouse, child, or parent with a serious health condition; or;
 - d. the employee's serious health condition which renders him/her unable to perform one or more of the essential functions of his/her position.
3. For purposes of calculating the amount of FMLA leave an eligible employee may request, the term "during any twelve (12) month period" means a rolling twelve (12) month period measured backward from the date requested leave will be used.
4. The taking of a FMLA leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced; however, nothing in this policy shall entitle any employee to the accrual of any seniority or additional employment benefits during the period of the leave.
5. Unless one of the exceptions in the law applies, an employee who takes an FMLA leave for the intended purpose of the leave shall be entitled, on timely return from the leave and completion of all required documentation, to be restored to the position of employment held with the leave commenced or to an equivalent position with equivalent employment benefits, pay and other terms and conditions.
6. At the election of the eligible employee, any group health plan will be maintained for the duration of an FMLA leave and at the level and under conditions coverage would have been provided if the employee had continued in employment for the duration of the leave. The employee will be responsible for paying his/her share of the premium. While on an unpaid FMLA leave, the employee will be responsible for paying this part of the premium by submitting payment to the Human Resources Office on or before each regular payday. The College may recover its share of the premiums for maintaining coverage for the employee under such group health plan during the period of an FMLA leave if the employee fails to return to work (or returns but fails to stay 30 calendar days) for reasons other than the continuation or onset of

a serious health condition entitling the employee to FMLA leave or other circumstances beyond the employee's control. Certification of inability to return to work may be required.

7. As permitted by the FMLA regulations, the College may require an employee to use up to half of his/her available sick and/or vacation accumulation prior to initiation of unpaid leave. At the employee's request, all of his/her sick and/or vacation accumulation may be used prior to unpaid leave in order to extend the paid portion of FMLA leave. Upon exhaustion of the above-described accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for an FMLA purpose exceed twelve (12) workweeks in any twelve (12) month period as defined herein.
8. FMLA leave for the birth/care of a child or for the placement of a child for adoption or foster care must be taken within the twelve (12) month period which starts on the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the twelve (12) month period. Unless specifically permitted, FMLA leave for these purposes cannot be taken on an intermittent or reduced leave schedule.
9. An eligible employee who foresees that she/he will require a leave for the birth/care of a child, or for adoption or foster care placement, must notify the Human Resources Office in writing not less than thirty (30) calendar day in advance of the start date of the leave. If not foreseeable, the employee must provide as much written notice as is practicable under the circumstances, generally within two (2) working days of learning of the need for leave.
10. An eligible employee who foresees that she/he will require a leave of absence due to planned medical treatment for herself/himself or for her/his spouse, child or parent, must notify the Human Resources Office in writing as early as possible so that the absence can be scheduled at a time least disruptive to the College's operations. Such notice should be at least thirty (30) calendar days in advance of the start of leave, unless impracticable, in which case the employee must provide written notice as early as circumstances permit, generally within two (2) working days of learning of the need for leave.
11. If the requested leave is to care for a spouse, child or parent who has a serious health condition, the employee will be required to file with the Human Resources Office in a timely manner a health care provider's statement that the employee is needed to care for the son, daughter, spouse or parent and an estimate of the amount of time that the employee is needed for such care.
12. If the requested leave is because of a serious health condition of the employee which renders her/him unable to perform one or more of the essential functions of her/his position, the employee may be required to file with the Human Resources Office a health care provider's statement as allowed by the FMLA.

13. Subject to the limitations and certifications allowed by the FMLA, leaves taken for a serious health condition may be taken intermittently or on a reduced leave schedule when medically necessary, provided a health care provider certifies the expected duration and schedule of such leave and provided further that where such leave is foreseeable based upon planned medical treatment the employee attempt to schedule the leave so as not to disrupt operations of his/her department. The employee may be required or may elect to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position.
14. An employee on an approved leave under this policy must inform the Human Resources Office every thirty (30) days regarding her/his status and intent to return to work upon conclusion of the leave. An employee may also be required to submit a fitness-for-duty certification before returning to work.
15. In any case where there is reason to doubt the validity for the health care provider's statement or certification for leaves taken for a serious health condition, the College may, at its expense, require second and third opinions, as specified by the FMLA, to resolve the issue.
16. The provisions of this policy are intended to comply with the Family and Medical Leave Act of 1993, and any terms used from the FMLA will be as defined in the Act or the U.S. Department of Labor ("DOL") regulations. To the extent that this policy is ambiguous or contradicts the Act or DOL regulations, the language of the Act or regulations will prevail.

YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Muhlenberg College employees are eligible if they have been employed with the College for at least one year, and for at least 1,250 hours over the previous 12 months.

REASONS FOR TAKING A LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- Muhlenberg College may require medical certification to support a request for leave because of a serious health condition, and may require a second or third opinion (at College expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the College will maintain the employee's health coverage under any group health plan available to employees.
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other terms of employment.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The US Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under US Government, Department of Labor.

INFORMATION FOR EMPLOYEES

REQUESTING A LEAVE UNDER FMLA

The Family and Medical Leave Act of 1993 guarantees you certain rights, as outlined in the notice enclosed. In accordance with the provisions of the Act, Muhlenberg College has adopted the following practices and procedures:

1. FMLA leave taken on a paid or unpaid basis will be counted against an employee's annual FMLA leave entitlement.
2. The employee is required to furnish medical certification of serious health conditions, within 15 working days of the leave request unless that is not practicable despite an employee's diligent, good faith efforts. Failure to provide medical certification will result in denial of a requested FMLA leave until the employee submits the certification.
3. The College may require an employee to use up to half of his/her available sick and/or vacation accumulation prior to initiation of unpaid leave. At the employee's request, all of his/her sick and/or vacation accumulation may be used prior to unpaid leave in order to extend the paid portion of FMLA leave.
4. Health insurance premiums for coverage that an employee wishes to continue are due and payable on the date(s) that these payments would have been deducted from the employee's paychecks.
5. With the exception of "key employees," reinstatement to the same or an equivalent position is a right of the employee. (A "key employee" is defined as one who is among the highest paid 10 percent of all College employees.) Prior to returning to work, the employee must present a fitness-for-duty certificate. The College is not required to reinstate any employee who fails to present a fitness-for-duty certificate.
6. "Key employees" of the College are not guaranteed reinstatement if such reinstatement would cause substantial and grievous economic injury to the operations of the College. This would be the case if the reinstatement would threaten the economic viability of, or cause substantial, long-term economic injury to, the College.
7. An employee who does not return to work at the conclusion of FMLA leave will be responsible for re-payment of premiums paid on his/her behalf during the FMLA leave by the College.

For further information on the provisions of the Family and Medical Leave Act and the procedures followed by the College, please contact the Human Resources Office (484) 664-3166.

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Fact Sheet

The Family and Medical Leave Act of 1993 (FMLA) was enacted on February 5, 1993.

The new law was effective on August 5, 1993, for most employers. If a collective bargaining agreement (CBA) was in effect on that date, the Act became effective on the expiration date of the CBA or February 5, 1994, whichever was earlier.

The US Department of Labor's Employment Standards Administration administers and enforces FMLA for all private, state and local government employees, and some Federal employees.

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons. An eligible employee's right to FMLA leave began on August 5, 1993; any leave taken before that date does not count as FMLA leave.

The law contains provisions relating to employer coverage; employee eligibility for the benefits of the law; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and, protection for employees who request or take FMLA leave. In addition, the law includes certain employer recordkeeping provisions.

EMPLOYER COVERAGE

FMLA applies to all:

- public agencies, including state, local and federal employers; and
- private sector employers who employ 50 or more employees and who are engaged in commerce or in any industry or activity affecting commerce - including joint employers and successors of covered employers.

EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- (1) work for a covered employer;
- (2) have worked for the employer for at least 12 months;
- (3) have worked at least 1,250 hours over the previous 12 months; and,
- (4) work at a location where at least 50 employees are employed by the employer within 75 miles.

LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth or placement of a child for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

Spouses employed by the same employer are jointly entitled to a combined total of 12 workweeks for the birth or placement of a child for adoption or foster care, and to care for a child or parent (but not a parent-in-law) who has a serious health condition.

Leave for birth or adoption (including foster care placement) must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently, taking leave in blocks of time or by reducing their normal weekly or daily work schedule.

Leave Entitlement (continued)

- Where FMLA leave is for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

- FMLA leave may be taken intermittently whenever it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Also, subject to certain conditions, employees or employers may choose to use accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. The employer is responsible for designating if paid leave used by an employee counts as FMLA leave, based on information provided by the employee. In no case can an employee's paid leave be credited as FMLA leave after the leave has been completed.

"Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility;
- any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
- continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for parental care.

MAINTENANCE OF HEALTH BENEFITS

A covered employer is required to maintain group health insurance coverage for an employee on an FMLA leave whenever such insurance was

provided before the leave was taken and on the same terms as if the employee had continued to work. Where appropriate, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

In some instances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and condition.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Under specified and limited circumstances, the employer may refuse to reinstate certain highly-paid "key" employees after using the FMLA leave. In order to do so, the employer must:

- notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- notify the employee as soon as the employer decides to deny job restoration and explain the reasons for this decision; and,

- offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice.

A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees within 75 miles of the work site.

NOTICE AND CERTIFICATION

Employees seeking to use FMLA leave may be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- second or third medical opinions and periodic recertifications (at the employer's expense); and periodic reports during FMLA leave regarding the employee's status and intent to return to work.

When leave is needed to care for an immediate family member or the employee's own illness, and is for planned medical treatment, the employee must schedule treatment so that it will not unduly disrupt the employer's operation.

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. An employer that willfully violates this posting requirement may be subject to a fine of up to \$100 for each separate offense.

In addition, covered employers are obliged to provide information to their employees about their rights and responsibilities under FMLA, including specific information in response to an employee's notice of the need for FMLA leave regarding just what will be required of the employee and what might happen in certain circumstances, such as if the

employee fails to return to work from FMLA leave.

UNLAWFUL ACTS

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

ENFORCEMENT

FMLA will be enforced by the U.S. Labor Department's Employment Standards Administration. This agency will investigate complaints of violations. If violations cannot be satisfactorily resolved, the Secretary may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations.

OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules provide for FMLA leave to be taken in blocks of time when the leave is needed near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and over-time under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by suing any unpaid, FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extend only to "eligible" employees' use of leave required by FMLA.

The FMLA does not affect any other Federal or State law which prohibits discrimination. It does not supersede any State or local law which provides greater family or medical

leave protection. Nor does it affect an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan.

The FMLA also encourages employers to provide more generous leave rights.

For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.